

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 173

Juvenile Justice

**SPONSOR(S):** Full Appropriations Council on General Government & Health Care; Criminal & Civil Justice Policy Council; Adams and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 654

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	8 Y, 1 N	Padgett	Kramer
2)	Health Care Services Policy Committee	5 Y, 0 N	Preston	Schoolfield
3)	Criminal & Civil Justice Policy Council	7 Y, 3 N, As CS	Padgett	Havlicak
4)	Criminal & Civil Justice Appropriations Committee	8 Y, 0 N	Darity	Davis
5)	Full Appropriations Council on General Government & Health Care	26 Y, 5 N, As CS	Darity	Leznoff

### SUMMARY ANALYSIS

The bill amends several statutes relating to the detention of juveniles. The bill:

- Permits the court to retain jurisdiction over a child beyond the age of 18, and the child's parents or guardians, until all fees, costs, and costs associated with court-appointed counsel have been satisfied.
- Permits a child to be taken into custody for violating the conditions of preadjudicatory release set by the court.
- Permits the detention of a child that absconds from home or nonsecure detention care or otherwise violates the terms of release while awaiting placement in a residential facility, or commits a new law violation, or that intentionally fails to appear for trial.
- Requires that a child be placed in secure detention care upon intake if alleged to have absconded from home or nonsecure detention or otherwise violated the terms of postadjudication release.
- Provides that the pre and postadjudication time limits for holding a child in detention care do not apply to a child held in secure detention for absconding from home or nonsecure detention, committing a new law violation, or otherwise violating the terms of release after adjudication while awaiting placement in a residential facility; escaping or absconding from certain residential, probation or other programs; being charged with certain acts specified in current law; or intentionally failing to make a court appearance.
- Increases the length of time a child awaiting placement in a low or moderate risk residential program can be held in secure detention care and provides that the only detention option for a child committed to a high risk or maximum risk residential program is secure detention.
- Makes the court primarily responsible for determining the appropriate restrictiveness level for a child committed to a residential program.
- Provides counties with the option to levy a mandatory court cost of up to \$50 to fund local juvenile crime initiatives.
- Provides a statement of legislative intent.

The bill has an indeterminate fiscal impact on state and county governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

This bill proposes numerous changes to state policy concerning the use and length of detention for juveniles. It covers all phases of the process, from custody and initial intake to adjudication, and to disposition through postcommitment placement.

The Legislature has defined "detention care"<sup>1</sup> to mean "the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order."<sup>2</sup> There are three types of detention care, as follows:

- "Secure detention" means temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.
- "Nonsecure detention" means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice (DJJ) pending adjudication, disposition, or placement.
- "Home detention" means temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the DJJ staff pending adjudication, disposition, or placement. For FY 2006-07, the average daily population on home detention was 1,744 youth.<sup>3</sup>

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<sup>1</sup> Statutory references to "detention" do not include postcommitment residential facilities even though being committed to a residential facility is a form of "detention." However, for purposes of state policy and, specifically, the changes in this bill, the two should not be confused.

<sup>2</sup> Section 985.03(18), F.S.

<sup>3</sup> 2006-07 Comprehensive Accountability Report, Florida Department of Juvenile Justice, p. 73.

Most youth are not placed on detention care prior to adjudication, but are released to a parent or guardian.<sup>4</sup>

The state and the counties, other than the fiscally constrained counties<sup>5</sup> in certain circumstances, jointly fund detention care.<sup>6</sup> In this context, “detention care” has been defined as limited to “secure detention.”

Specifically, counties are required to pay for predisposition secure detention costs. The state pays for postdisposition secure detention costs. The counties’ share of the overall cost of secure detention includes the number of predisposition youth in detention centers multiplied by their length of stay. As the percentage of predisposition youth and/or number of days increases, the counties’ share of detention costs also increases.

## **LIABILITY FOR FEES AND COSTS**

Currently, parents or legal guardians of a minor child are liable for the payment of fees, charges, and costs of representation by court-appointed counsel.<sup>7</sup> Liability is imposed in the form of a lien against the property of the parents or legal guardians. If the court finds that the child or parent is not in contempt for failure to pay attorney’s fees or costs, the court can allow additional time for payment, or reduce or revoke the assessed fees or costs.<sup>8</sup> The child or parents that are not in willful default may petition the court to defer payment of all or part of the attorney’s fees or costs.<sup>9</sup>

If a child is placed in detention care, detention fees are charged to the parent of the child for cost of care at a rate of \$1 per day for home detention, probation, or other supervision; and \$5 per day when placed in secure detention or otherwise in the custody of the DJJ. The court must waive or reduce fees upon a finding of indigence and significant financial hardship. Fees can be directed to the child in lieu of the parent if the child reaches 18 prior to the detention or disposition hearing at which fees are imposed. For the parent or child to be liable for these fees, the child must be adjudicated, had adjudication withheld, or violated a court order.<sup>10</sup>

The bill permits the court to retain jurisdiction over a child after the child turns 19, and also over the child’s parents or guardians, until all costs, fees, and costs associated with court appointed counsel have been satisfied, regardless of adjudication. The retention of jurisdiction does not preclude DJJ from closing the community supervision case if all other conditions have been satisfied.

## **PRE-ADJUDICATORY RELEASE**

Current law permits a law enforcement officer to take a child into custody in four circumstances:

- pursuant to a custody order issued by a circuit judge,<sup>11</sup>
- for a delinquent act or violation of law,

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<sup>4</sup> According to the Department of Juvenile Justice, for FY 2006-07, approximately 109,000 of the 146,000 referrals were releases. These included some youth charged with felonies.

<sup>5</sup> “Fiscally constrained county” means “a county within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.” Section 985.656(2)(b), F.S.

<sup>6</sup> Section 985.686, F.S.

<sup>7</sup> Section 27.52(6), F.S.

<sup>8</sup> Section 27.561(3), F.S.

<sup>9</sup> Section 938.29(3), F.S.

<sup>10</sup> Section 985.039(1), F.S. See also, s. 985.0395, F.S. The Legislature has approved a pilot program in the 4<sup>th</sup> and 11<sup>th</sup> Judicial Circuits, allowing the court to waive cost of care fees required to be paid by the parent for successful completion of a parenting class.

<sup>11</sup> A custody order is the juvenile equivalent of an arrest warrant.

- for failing to appear at a court hearing after being properly noticed, and
- when there is probable cause to believe the child has violated the conditions of probation, home detention, postcommitment probation or conditional release supervision, or has absconded or escaped from residential commitment.<sup>12</sup>

The bill permits a law enforcement officer to take a child into custody in an additional circumstance - when a child on release without any form of detention care violates the conditions of preadjudicatory release. The bill gives the court the authority to impose conditions for preadjudicatory release such as requiring the child to obey all laws, not possess or carry a weapon, abstain from using alcoholic beverages or illegal drugs, and attend school.

## **USE OF DETENTION**

### **Factors Affecting Detention**

Current law requires the court to make certain findings before placing a child in secure, home, or nonsecure detention care.<sup>13</sup> These findings include whether the child: presents a substantial risk of not appearing at a subsequent hearing, presents a substantial risk of causing bodily harm to others, has a history of committing property offenses, has been found to be in contempt of court, or requests protection from imminent bodily harm.<sup>14</sup> Except when a child is charged with domestic violence, all determinations and court orders concerning placement of a child into detention care must be based on the risk assessment instrument.<sup>15</sup>

The bill adds another factor the court may use in determining whether the child should be placed on secure, nonsecure, or home detention care: whether the child has been adjudicated delinquent and committed to a residential facility, but is on home or nonsecure detention care awaiting placement and the child:

- is alleged to have absconded from home or nonsecure detention care,
- violates the terms of postadjudication release, or
- commits a new law violation

### **Intake**

Currently, the juvenile probation officer receives custody of a child who has been taken into custody by law enforcement and is required to review the facts in the law enforcement report or probable cause affidavit and make further inquiry as may be necessary to determine whether detention care is required.<sup>16</sup> From the time the child is taken into custody to the time the detention hearing is held, the initial placement decision is made by the juvenile probation officer.<sup>17</sup> The juvenile probation officer must base any decision to detain the child on an assessment of risk using the risk assessment instrument developed by the DJJ under s. 985.245, F.S.<sup>18</sup> A child must be placed into secure detention if the child is charged with possessing or discharging a firearm on school property.<sup>19</sup>

The bill adds additional circumstances that require the child to be placed in secure detention after the child is taken into custody. The bill requires a child be placed in secure detention care upon intake if

<sup>12</sup> Section 985.101(1)(d), F.S.

<sup>13</sup> Section 985.24, F.S.

<sup>14</sup> Id.

<sup>15</sup> Section 985.245(1), F.S.

<sup>16</sup> Section 985.25(1), F.S.

<sup>17</sup> Section 985.245(1), F.S.

<sup>18</sup> Section 985.25(1)(b), F.S.

<sup>19</sup> Id.

the child has been adjudicated delinquent and is awaiting placement in a residential facility in home or nonsecure detention care and the child:

- is alleged to have absconded from home or nonsecure detention care,
- violates the terms of post-adjudication release, or
- commits a new law violation

### **Continued Detention**

Under certain circumstances, a court may continue to detain a child taken into custody and placed in home, nonsecure, or secure detention care prior to the detention hearing.<sup>20</sup> These circumstances include when the child is:

- an escapee from a residential treatment program;
- wanted in another jurisdiction for a felony;
- charged with a delinquent act and seeks protection from imminent bodily harm;
- charged with possession and discharge of a firearm on school grounds;
- charged with a capital felony;
- alleged to have violated probation or conditional release supervision; or
- detained for failure to appear when the child has previously willfully failed to appear for a hearing on the same case.

The bill provides two additional circumstances where the court may detain a child who is taken into custody prior to the detention hearing. The bill provides the court may detain the child if:

- the child is alleged to have absconded from home or nonsecure detention care or otherwise violates the terms of release after adjudication, but while awaiting placement to a residential facility.
- there is probable cause to believe the child has committed a new violation of law while on home or nonsecure detention care after adjudication, but while awaiting placement in a residential facility.

### **Secure detention care authorized for failure to appear for trial**

All determinations and court orders regarding the use of secure, nonsecure, or home detention care must be based primarily upon findings (relevant to failure to appear) that the child presents a substantial risk of not appearing at a subsequent hearing; or has committed contempt of court by intentionally disrupting the administration of the court or intentionally disobeying a court order.<sup>21</sup> Determinations and orders placing a child in detention care must be based on a risk assessment.<sup>22</sup> The risk assessment instrument must take into consideration any prior history of failure to appear.

A child taken into custody and placed into nonsecure, home detention or secure detention care prior to a detention hearing may continue to be detained by the court if the child is charged with any second or third degree felony involving a violation of chapter 893 (i.e., illegal drugs) or any third degree felony that is not also a crime of violence; and the child has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure.<sup>23</sup>

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<sup>20</sup> Section 985.255(1), F.S.

<sup>21</sup> Section 985.24(1), F.S.

<sup>22</sup> Section 985.245(2)(b), F.S.

<sup>23</sup> Section 985.255(1)(g), F.S.

The bill permits the court to have the child held in secure detention care until the conclusion of the adjudicatory hearing if the child fails to appear in court, runs away, or otherwise intentionally avoids a court appearance. The bill provides the court may commit the child to secure detention care regardless of the results of the risk assessment instrument. The bill also permits the court to hold the parent or legal guardian in contempt of court for knowingly and willfully failing to bring or otherwise preventing the child from appearing for trial.

### **Secure detention care permitted for violation of probation**

Current law provides that when a child is taken into custody for a violation of probation, the child must be placed in a consequence unit, if available. A consequence unit is a secure facility specifically designated by DJJ for children who are taken into custody for a violation of probation. Current law does not contain specific alternatives to placement in a consequence unit.

The bill permits a child to be held in secure detention if the child is taken into custody for a violation of probation and a consequence unit is not available.

### **LENGTH OF DETENTION**

Current law provides a child may not be held in secure, nonsecure, or home detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.<sup>24</sup> However, upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.<sup>25</sup> The time limits do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child, the child's counsel, or the state. If the court grants a motion for continuance, the court must conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of the proceedings.<sup>26</sup>

The bill provides that the preadjudication and postadjudication time limits for holding a child in detention care do not apply to a child held in secure detention for absconding from home or nonsecure detention, committing a new law violation, or otherwise violating the terms of release after adjudication while awaiting placement in a residential facility; escaping or absconding from certain residential, probation or other programs; or being charged with certain acts specified in current law; or intentionally failing to make a court appearance.

### **DETENTION FROM DISPOSITION TO PLACEMENT**

Currently, there are different time frames for holding a child in detention between adjudication where a residential commitment is ordered and placement in the residential program. If awaiting placement into a residential program:

- In a low-risk residential program, the child must be removed from detention care within five days, excluding Saturdays, Sundays, and legal holidays.<sup>27</sup> A child placed in home detention, nonsecure detention, or home or nonsecure detention care with electronic monitoring, may be held in secure detention care for an additional five days if the child violates the conditions of the home detention or the nonsecure detention care, or the electronic monitoring

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<sup>24</sup> Section 985.26(2) and (4), F.S.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Section 985.27(1)(a), F.S.

agreement.<sup>28</sup> For any subsequent violation, the court may impose an additional five days in secure detention care.<sup>29</sup>

- In a moderate-risk program, the child must be removed from detention care within five days, excluding Saturdays, Sundays, and legal holidays.<sup>30</sup> The court may order additional time in detention, not to exceed 15 days from the commitment order.<sup>31</sup> A child placed in home detention, nonsecure detention, or home or nonsecure detention care with electronic monitoring may be held in secure detention care for five days if the child violates the conditions of the home detention or nonsecure detention care, or the electronic monitoring agreement.<sup>32</sup> For any subsequent violation, the court may impose an additional five days in secure detention care.<sup>33</sup>
- In a high or maximum-risk program, the child must be held in detention until placed, but detention care may be home, nonsecure, or secure.

The bill increases the length of time a child awaiting placement in a low or minimum risk residential program could be held in secure detention care following commitment at disposition, and requires that the detention options of a child committed to a high risk or maximum risk residential program be limited to secure detention care.

For a child awaiting placement in a low risk program, the bill provides the child could be held in secure detention for 15 additional days for a second or subsequent violation of the conditions of home or nonsecure detention care, the terms of any release, or the conditions of any electronic monitoring agreement.

For a child awaiting placement in a moderate risk program, the bill provides the child could be held in secure detention for 15 days. The child is required to be held in secure detention if the child is alleged to have absconded from home or nonsecure detention care, violated the terms of release or electronic monitoring, or probable cause exists that the child committed a new law violation.

## JUDICIAL ROLE IN RESIDENTIAL PLACEMENT DECISIONS

Currently, if the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the DJJ, such determination must be in writing or on the record of the hearing.<sup>34</sup> The determination must include a specific finding of the reasons for the decision to adjudicate the child delinquent and to commit the child to the DJJ. The juvenile probation officer then recommends the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. The court must consider the juvenile probation officer's recommendation in making its commitment decision. The court may commit the child to the DJJ at the restrictiveness level identified by the juvenile placement officer, or may order placement at a different restrictiveness level. If the court orders placement at a restrictiveness level that is different from the recommendation of the juvenile probation officer, the court must make a special finding establishing its reasons for disregarding the recommendation by a preponderance of the evidence. Any party may appeal the court's findings resulting in a modified level of restrictiveness.

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<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Section 985.27(1)(b), F.S.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Section 985.433(7), F.S.

On January 30, 2009, the Supreme Court of Florida clarified the rationale the court must provide if the court decides to commit the child to a restrictiveness level different from that recommended by the juvenile probation officer.<sup>35</sup> The Supreme Court held that the court must:

- “articulate an understanding of the respective characteristics of the opposing restrictiveness levels...;” and
- “explain logically and persuasively explain why, in light of these differing characteristics, one level is better suited to serving the rehabilitative needs of the juvenile...and the ability of the State to protect the public.”<sup>36</sup>

The Court held that reasons unconnected to the above analysis cannot be used to explain why one restrictiveness level is more appropriate than another.<sup>37</sup>

The bill includes the legislative finding that the court is in the best position to determine whether or not to commit a child to the DJJ and determine the most appropriate restrictiveness level. The bill also gives the court primary authority to determine the appropriate restrictiveness level for secure residential placement. As a result, the bill changes the juvenile probation officer’s role into an advisory position.<sup>38</sup> Specifically, it would eliminate the requirement that the court make a specific finding by a preponderance of the evidence in order to have a child placed at a restrictiveness level different than that recommended by the juvenile probation officer.

## **COURT COST FOR COUNTIES FOR JUVENILE CRIME NEEDS**

The bill provides counties with a new revenue source of a mandatory court cost of up to \$50. Proceeds from this court cost can only be used to fund local juvenile crime prevention programs, the creation of consequence or suspension centers, and “other such areas of local concern relating to juvenile crime.” The board of county commissioners in each county would have the option to levy the additional fee.

## **LEGISLATIVE INTENT**

The bill provides it is the intent of the Legislature to ensure public safety and to provide appropriate and effective treatment to address physical, social, and emotional needs of juveniles, including, but not limited to, substance abuse services, mental health services, family counseling, anger management, other behavioral services, and health care services.

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 985.0301, F.S., relating to jurisdiction.

Section 2: Creates s. 985.031, F.S., relating to preadjudicatory release; circuit court authority.

Section 3: Amends s. 985.101, F.S., relating to taking a child into custody; preadjudicatory release conditions.

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<sup>35</sup> E.A.R. v. State, No. SC08-506 (Fla. January 30, 2009).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> In practice, this provision may produce a different result in a very limited number of cases. In an effort to examine judicial satisfaction with DJJ recommended restrictiveness levels, House staff recently asked the DJJ to identify, over the last three years, the percentage of cases in which judges agreed with the restrictiveness level recommended by the Department commitment manager. This data indicated that judges agreed with the recommendations of DJJ commitment managers in the overwhelming majority of cases, on average approximately 85 percent. However, there were several circuits, the 1<sup>st</sup>, 3<sup>rd</sup>, 8<sup>th</sup> and 17<sup>th</sup>, that had consistently and substantially lower rates of agreement. All but one of these circuits are in the North Region of the Department of Juvenile Justice. *Data provided to House Juvenile Justice Staff by the Department of Juvenile Justice, October 2007.*



Section 4: Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 5: Amends s. 985.245, F.S., relating to risk assessment instrument.

Section 6: Amends s. 985.25, F.S., relating to detention intake.

Section 7: Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 8: Amends s. 985.26, F.S., relating to length of detention.

Section 9: Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 10: Amends s. 985.27, F.S., relating to postcommitment detention while awaiting placement.

Section 11: Creates s. 985.28, F.S., relating to appearance in court; preadjudicatory detention; contempt.

Section 12: Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.

Section 13: Amends s. 985.43, F.S., relating to predisposition reports; other evaluations.

Section 14: Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.

Section 15: Amends s. 985.439, F.S., violation of probation or postcommitment probation.

Section 16: Creates s. 938.20, F.S., relating to county juvenile crime prevention fund.

Section 17: Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by a minor under 16; limitation; possession of firearms by a minor under 18 prohibited; penalties.

Section 18: Provides this act fulfills an important state interest.

Section 19: Providing legislative intent.

Section 20: Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Indeterminate. See fiscal comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. See fiscal comments.

D. FISCAL COMMENTS:

The bill is expected to have an indeterminate recurring fiscal impact. A provision that could or would likely generate increased detention bed utilization relates to the requirements that a child be placed in secure detention care upon intake if alleged to have absconded from home or nonsecure detention or otherwise violated the terms of post-adjudication release. Though this could have a significant bed day impact, any estimation would be highly speculative due to the number of assumptions that would comprise the estimation. Factors preventing a determinable fiscal impact of this bill may include, but are not limited to, the number of children ultimately placed in secure detention; any additional number of secure detention bed days; judicial actions; and the continuing trends of declining secure detention bed days in general.

However, the bill provides counties with a new revenue source in the form of a mandatory court cost of up to \$50 that can be used to fund, among other things, the creation of consequence or suspension centers, and "such other areas of local concern relating to juvenile crime." (It is unclear if this includes county detention costs such that it could be applied to offset any increase in detention costs incurred by counties as a result of this bill.) This new revenue source could generate annual recurring revenues of at least \$1.8 million based on the current 49% collection rate for similar assessments, or \$3.5 million with a 100% collection rate.

The Florida Association of Counties (FAC) has noted some fiscal concerns with this legislation, as the counties in some cases, may be required to spend more resources housing juveniles than under current law. FAC is also concerned that the bill does not clearly specify that the fee can be used for the costs associated with the bill, or if it would offset potential costs.

Due to a possible increase in the number of cases processed, the courts may experience increased costs of an indeterminate amount at least initially but, over time, may find any increased costs offset by a reduction in the number of referrals. The State Courts System has reported it cannot accurately determine the judicial workload associated with the provisions in the bill.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Several sections of the bill proposing changes to state policy relative to predisposition detention, both when it can be used and the length of detention, could have the effect of requiring counties to expend funds. As a result, the requirements of Article VII, Section 18(a) of the Florida Constitution may apply. This would include the requirement that the bill be approved by a 2/3<sup>rd</sup>s vote of the membership of each house on final passage.

Assuming the bill requires counties to spend funds by increasing their share of total detention costs, the next step is to determine whether or not one of several possible exemptions apply. The two exemptions most relevant to this bill would be the exemption for a criminal law and the exemption due to an insignificant fiscal impact.

With regard to the criminal law exemption, on November 12, 2004, the Circuit Court for the 2<sup>nd</sup> Judicial Circuit declared s. 985.2155, F.S.,<sup>39</sup> unconstitutional because it violated the mandates provision of the Florida Constitution.<sup>40</sup> This section of law required counties to participate in funding the cost of juvenile detention. The court found that the law did not meet any of the constitutional exemptions or exceptions and, therefore, required a 2/3<sup>rd</sup>s vote for passage. The court found that it was not a criminal law. The bill did not pass by the necessary vote. This decision was not appealed and the Legislature has not defined this term pursuant to the authority granted by Art. VII, Section 18(e).

With regard to the fiscal impact exemption, the impact will be considered “insignificant” if it does not exceed an amount equal to an average of \$0.10 multiplied by the current state population, or approximately \$1.9 million for FY 2007. While it can reasonably be expected to have a negative fiscal impact on counties, the amount of any impact is indeterminate.

If the bill does not fall within one of the exemptions, it can nonetheless bind counties if it the Legislature finds that it fulfills an important state interest and meets one of several criteria. The bill does include this finding. As for meeting other criteria, the most relevant would be that the Legislature has authorized counties to enact a funding source that can be used to generate an amount of funds sufficient to fund any required expenditures. This bill does provide counties with an additional revenue source in the form of a mandatory court cost of up to \$50 that could generate up to \$3.5 million, depending on the assumptions utilized, to fund, among other things, the creation of consequence or suspension centers, and “such other areas of local concern relating to juvenile crime.” It is unclear if this includes county detention costs such that it could be applied to offset any increase in detention costs incurred by counties as a result of this bill. If so, this could be construed as providing the necessary offsetting revenue, although the extent to which it does so depends upon the extent of any negative fiscal impact on counties as a result of this bill. (See Fiscal Comments, Section II.D., of this Analysis.)

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2009, the Criminal & Civil Justice Policy Council adopted an amendment to the bill that provides a statement of the legislative intent of the bill.

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<sup>39</sup> Later transferred to s. 985.686, F.S.

<sup>40</sup> Alachua County, Florida, et. al v. Anthony Schembri, in his capacity as Secretary of the State of Florida, Department of Juvenile Justice, et. al, (Fla. 2<sup>nd</sup> Cir. Ct.)